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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,360	03/04/2002	Petros Tsiopoulos	9952-042-999	1541
909	7590	06/03/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			CLOW, LORI A	
P.O. BOX 10500				
MCLEAN, VA 22102			ART UNIT	PAPER NUMBER
			1631	

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/091,360	TSIPOURAS ET AL.
	Examiner	Art Unit
	Lori A. Clow, Ph.D.	1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 March 2005.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 13-18,31-34 and 36-43 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 13-18,31-34 and 36-43 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 9/20/04;12/6/04.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

Applicants' arguments, filed 23 March 2005, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Currently, claims 13-18, 31-34, and 36-43 are pending in the application.

### **Information Disclosure Statement**

The Information Disclosure Statements filed 20 September 2004 and 6 December 2004 have been considered. Signed copies of PTO Forms 1449 are included with this Office Action.

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-18, 31-34, 36-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 38 recites step (i), which includes digitally receiving a color image. The next step is one of transforming. However, this step is not included as a second step (ii), and therefore it is unclear if this procedure happens simultaneously with step (i) or if it is a separate step. Clarification is requested.

Claim 38 recites “predetermined selection criteria”. This is unclear, as no criteria have been determined. What criteria does Applicant intend? Clarification is requested.

Claim 38 recites “predetermined selection criteria **may be applied**”. It is unclear if this step is essential or not. Is it applied or is it not applied? Clarification is requested.

Claim 38, step (iii), recites “for eliminating from the candidate blob”. Is this a step or an intended result of the method? Clarification is requested.

Claims 38 and 39, in the preamble, recite “a method for rare cell image identification” and “computer directed steps to selectively identify a rare cell image”, respectively. However, there is no actual step of “identification” in the claims. Clarification is requested.

### **Response to Applicant’s Arguments**

#### *Non-Compliance*

In view of Applicant’s arguments, providing detailed support for the newly submitted claims, claims 38-43 are hereby examined as originally elected.

#### *Double Patenting*

The rejection under 35 USC 101, Double Patenting, has been withdrawn in view of Applicant’s amendments to the claims.

#### *35 USC 112, 2<sup>nd</sup> Paragraph*

Rejections under 35 USC 112, 2<sup>nd</sup> paragraph from the previous Office Action have been withdrawn in view of Applicant’s cancellation of the rejected claims.

***35 USC 102***

The rejection under 35 USC 102(e), over US 6,169,816 (Ravkin) has been withdrawn in view of Applicant's arguments. Specifically, Ravkin et al. use enriched cells, and not unenriched cells in the computer analysis.

The rejection under 35 USC 102(e) over Tsipouras et al. is withdrawn in view of Applicant's arguments. The rejection was improper, as the inventive entity in this application is identical to the cited reference. The Declaration under 37 CFR 1.132 is acknowledged.

No claims are allowed.

**Inquiries**

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR § 1.6(d)). The Central Fax Center Number is (571) 273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori A. Clow, Ph.D., whose telephone number is (571) 272-0715. The examiner can normally be reached on Monday-Friday from 10 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, Ph.D., can be reached on (571) 272-0718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also

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enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

May 26, 2005  
Lori A. Clow, Ph.D.  
Art Unit 1631  
*Lori A. Clow*

**MARJORIE A. MORAN**  
**PRIMARY EXAMINER**

*Marjorie A. Moran*  
5/26/05